

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

OMAR RASHAD POUNCY,

Plaintiff,

v.

MATTHEW MACAULEY, et al.,

Defendants.

CASE No. 1:20-CV-799

HON. ROBERT J. JONKER

**ORDER APPROVING AND ADOPTING
REPORT AND RECOMMENDATION**

Plaintiff asserts First Amendment retaliation and legal mail causes of action against sixteen MDOC defendants. The MDOC defendants move to dismiss the unexhausted claims. (ECF No. 12). The Magistrate Judge issued a Report and Recommendation that the Court deny the motion 1) as to the claims against Defendants Macauley and Guilford for retaliating against Plaintiff by placing him segregation; 2) against Defendant Guilford for instructing other officers on August 8, 2019, to read Plaintiff's legal mail; 3) against Defendants Geisen and Serritos for reading Plaintiff's legal mail between August 8 and 12, 2019; and 4) against Defendant Klein for reading Plaintiff's legal mail on August 21. (ECF No. 18, PageID.215-216). In all other respects, the Magistrate Judge recommended grant of the motion to dismiss, thus eliminating the claims against all other named Defendants for lack of exhaustion. (*Id.*).

Plaintiff did not file a response to the Motion itself. In some situations, this alone might prevent Plaintiff from attacking the Report and Recommendation now. *See Walker v. Berrien County Jail*, Case No. 1:18-cv-722, ECF No. 41 (W.D. Mich. Feb. 25, 2021) ("A party cannot sandbag the Court and an opposing party by submitting critical materials after the Magistrate Judge

submits his or her Report and Recommendation.”). But Plaintiff did file objections to the Report and Recommendation arguing that the Magistrate went beyond the relief the defense Motion requested, and further complaining that MDOC prevented him from getting documents in a timely way so that he could respond directly to the motion. Based on his objections, Plaintiff says the Court should reject the Report and Recommendation in all respects, except as to MDOC Defendant Nolan.

The Court has reviewed Magistrate Judge Green’s Report and Recommendation in this matter (ECF No. 18) and Plaintiff’s Objection to it. (ECF No. 23). Under the Federal Rules of Civil Procedure, where, as here, a party has objected to portions of a Report and Recommendation, “[t]he district judge . . . has a duty to reject the magistrate judge’s recommendation unless, on de novo reconsideration, he or she finds it justified.” 12 WRIGHT, MILLER & MARCUS, FEDERAL PRACTICE AND PROCEDURE § 3070.2, at 451 (3d ed. 2014). Specifically, the Rules provide that:

The district judge must determine de novo any part of the magistrate judge’s disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

FED R. CIV. P. 72(b)(3). De novo review in these circumstances requires at least a review of the evidence before the Magistrate Judge. *Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981). The Court has reviewed de novo the claims and evidence presented to the Magistrate Judge; the Report and Recommendation itself; and Plaintiff’s Objection. After de novo review, the Court overrules Plaintiff’s objections and adopts the Report and Recommendation.

The only substantive objection Plaintiff makes is that the Magistrate went beyond the scope of the relief requested by the MDOC Defendants. (ECF No. 23). Plaintiff is plainly

incorrect. Plaintiff notes that the defense brief identified only a single individual—“MDOC Defendant Nolan”—in the question presented. (*Id.*, at PageID.233-234). But this is an obviously typographical mistake and artifact from an earlier brief. There is not even a “defendant Nolan” named among the sixteen defendants that plaintiff sues. Moreover, the text of the MDOC Motion itself, as well as the full argument sections of the brief, demonstrate plainly that the defense is seeking dismissal of all unexhausted claims against all named defendants. (ECF Nos. 12 & 13). Plaintiff offers no other substantive objection to the analysis of the Report and Recommendation.

The Magistrate Judge carefully and thoroughly considered the evidentiary record, the parties’ arguments, and the governing law. The Magistrate Judge properly analyzed Plaintiff’s claims. Nothing in Plaintiff’s Objections changes the fundamental analysis on the exhaustion issue. The Court agrees, on *de novo* review, with the Magistrate Judge’s recommendation for the very reasons the Report and Recommendation delineates.

CONCLUSION

ACCORDINGLY, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge (ECF No. 18) is approved and adopted as the Opinion of the Court.

IT IS FURTHER ORDERED that Defendants’ Motion for Summary Judgment (ECF No. 12) is **GRANTED in part** and **DENIED in part**.

Dated: November 29, 2021

/s/ Robert J. Jonker
ROBERT J. JONKER
CHIEF UNITED STATES DISTRICT JUDGE